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In The

Supreme Court of the United States

October Term, 1973

No. 73-1819

M. A. CRAMER, M. G. MURPHY,
LARRY C. MOYER, JOHN B. PURCELL,
WILLIAM J. RHOADES AND ROY B. SCHERER,
Petitioners,

v.

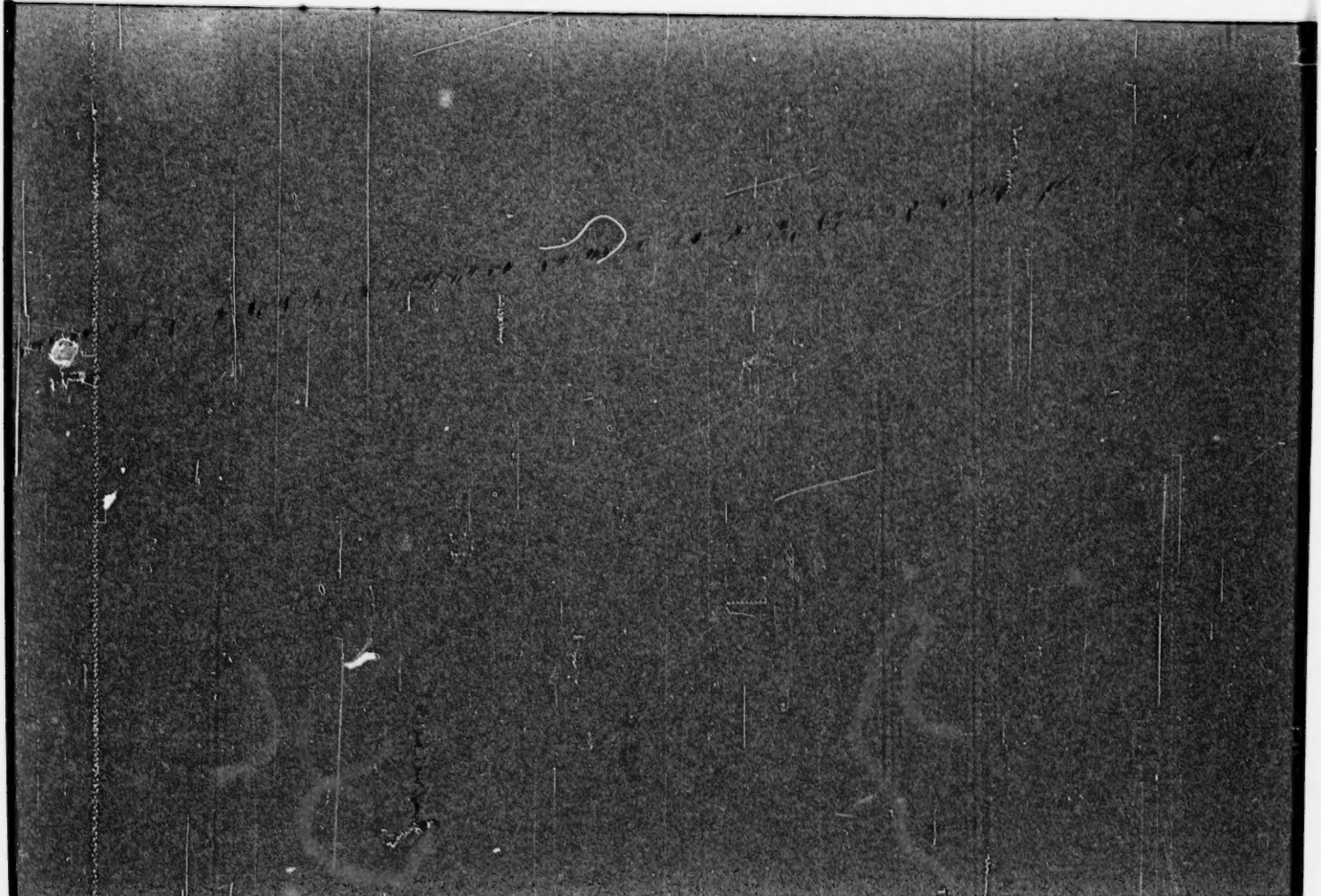
COMMONWEALTH OF VIRGINIA,
Respondent.

MOTION TO DISMISS

ANDREW P. MILLER
Attorney General of Virginia

STUART H. DUNN
Assistant Attorney General

Supreme Court Building
1101 East Broad Street
Richmond, Virginia 23219



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QUESTION PRESENTED

Whether the Commonwealth of Virginia has the right to decide those upon whom she shall confer the right to conduct ceremonies of marriage.

STATEMENT OF THE CASE

The statement of the case presented in Petitioners' brief is satisfactory with the exception of their discussion of the holding below. This will be addressed in argument.

ARGUMENT

The Supreme Court of Virginia placed this case in its proper perspective wherein it stated:

> "This case is not one concerning the guarantee of religious freedom as provided in the Constitution, but one of a proper construction of amended Code § 20-23 as an exercise by the General Assembly of its legislative power to delegate the authority to celebrate marriages and to provide licensing requirements for all persons who desire such authority." (App. 3a)

While Petitioners strain to construct a First Amendment argument, in fact this case involves nothing more than an interpretation of a state statute as to what persons are authorized to conduct marriage ceremonies.

The court below in interpreting § 20-23 of the Virginia Code found that Universal Life Church, Inc. had no minister within the meaning of that section. "A church which consists of all ministers, and in which all new converts can become instant ministers, in fact has no 'minister' within the contemplation of Code § 20-23." (App. 4a, 5a) It further found that the General Assembly never intended to qualify such a "minister" to celebrate marriages. Contrary to the argument of the Petitioners (Brief p. 11), the Universal Life Church is not "required" to do anything under the opinion below. It simply has no member who is authorized to marry others under Virginia law.

The interest of the State in the institution of marriage and in prescribing exclusive means for the creation and dissolution of the marital relationship has been recognized. *See, e.g., Boddie* v. *Connecticut*, 401 U.S. 371 (1971):

> ". . . It is not surprising, then, that the States have seen fit to oversee many aspects of that institution. Without a prior judicial imprimatur, individuals may freely enter into and rescind commercial contracts, for example, but we are unaware of any jurisdiction where private citizens may covenant for or dissolve marriages without state approval." 401 U.S. at 376.

The Court found that the state had an interest ". . . that the marriage contract itself be memorialized in writing and by a person of responsibility and integrity and by one possessed of some educational qualifications." (App. 3a) It went on to observe that "ministers" are normally qualified by education to perform marriages in a proper manner and are persons of integrity and responsibility. Obviously, no such generalization can be applicable where all persons are "ministers."

CONCLUSION

Petitioners argue that because they have been "ordained" as "ministers," the Commonwealth has no right to look behind this to determine if such persons are ministers within the meaning of the law. Such argument is akin to stating that if the Universal Life Church called an "apple" an "orange," Virginia would be bound by such designation. This is manifest nonsense. The General Assembly has determined those whom it will license to perform marriages. No federal question is created thereby.

The petition should be denied.

Respectfully submitted,

COMMONWEALTH OF VIRGINIA
By Counsel

ANDREW P. MILLER
Attorney General of Virginia

STUART H. DUNN
Assistant Attorney General

Supreme Court–Library Building
1101 East Broad Street
Richmond, Virginia 23219

CERTIFICATE OF SERVICE

I, Stuart H. Dunn, a member of the Bar of the Supreme Court of the United States and counsel for the above named respondent, hereby certify that I have served three copies of the foregoing Motion to Dismiss on Richard E. Crouch, Esq., American Civil Liberties Union of Virginia, 2304 Wilson Boulevard, No. 212, Arlington, Virginia 22201, and Melvin L. Wulf, American Civil Liberties Union, 22 East 40th Street, New York, N. Y., counsel for petitioners, this 3rd day of July, 1974. All parties required to be served have been served.

STUART H. DUNN
Assistant Attorney General